

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

**FILE:** B-205501.2**DATE:** January 17, 1983**MATTER OF:** SAFE Export Corporation--Reconsideration**DIGEST:**

Protester which withheld known relevant facts during development of initial protest which was dismissed as untimely cannot by way of request for reconsideration cure defects in initial protest or avoid consequences of its failure to affirmatively prove its case.

SAFE Export Corporation requests that we reconsider our decision in SAFE Export Corporation, B-205501, September 28, 1982, 82-2 CPD 289 in which we dismissed its protest as untimely under our Bid Protest Procedures, 4 C.F.R. Part 21 (1982). For the reasons discussed below, this request is denied.

This procurement has been the subject of three prior decisions by our Office. In 1980, SAFE protested the agency's refusal to permit a pre-proposal inspection of the alarm system control boxes which were to be serviced under the contract. SAFE also objected to certain provisions of the solicitation. This protest was denied in part and dismissed in part, a decision which we affirmed upon reconsideration. Security Assistance Forces & Equipment International, Inc., B-199377, March 17, 1981, 81-1 CPD 200, affirmed on reconsideration, B-199377.2, June 2, 1981, 81-1 CPD 435.

Upon receipt of our June 1981 decision, the Army proceeded with award of a contract to an offeror other than SAFE, even though SAFE's price was the lowest, because the Army had determined SAFE to be nonresponsive. Over 4 months later, in November 1981, SAFE protested to our Office, objecting to the determination that it was not responsible and asserting that, as the low offeror, it should have received award of the contract. Although SAFE acknowledged receiving our March and June 1981 decisions in which its objections to the

024393  
120263

conduct of the procurement were not sustained, it claimed not to have received a notice of award letter which Army records indicate was mailed to SAFE in June.

The Army argued that SAFE's November protest of an award made in June was untimely. In its February 22, 1982 response to the Army's report, SAFE attributed the delay in the filing of its protest to its nonreceipt of the notice of award and because:

"\* \* \* We reasonably assumed that the money had been unavailable until the next fiscal year (previous funds had been withdrawn) and that no award had been made on this solicitation, which would be either awarded or resolicited during the coming fiscal year. Just after the start of the new fiscal year, we inquired about the status of the solicitation; we were informed that an award had been made, by letter of 29 October 1981 (received 4 November 1981) \* \* \*."

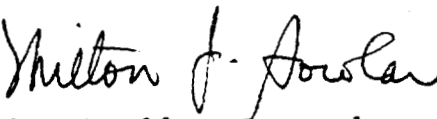
In our decision of September 28 we stated that it was reasonable to expect the Army to take some action to fill its needs soon after the protest was resolved in June. There was no indication in the record that SAFE had done anything during the 4 months between June and November to check the validity of its assumption that the procurement would be delayed. We held, therefore, that its delay was unreasonable and clearly reflected a lack of diligence in seeking the information which formed the basis for its protest.

SAFE now requests that we reconsider our dismissal of its most recent protest on the basis that "perhaps [SAFE has not] made it quite clear" that it made weekly telephone calls to the contracting officer concerning this matter between early July 1981 and the end of September 1981. SAFE states that although it never spoke directly to the contracting officer on these occasions, it asked that messages be left to the effect that SAFE "wished to be informed of the status of the solicitation for service on the alarm systems at the military banking facilities." When its telephone messages were not returned by the contracting officer, SAFE now advises, it made the assumption that there had been no activity on this procurement and, therefore, it did not make a written inquiry as to the procurement's status until after the beginning of the next fiscal year.

As we have indicated above, during our earlier consideration of SAFE's protest of the award of this contract, the Army raised the question of the timeliness of the protest and specifically argued that SAFE had been dilatory in pursuing it. We have quoted above SAFE's February 22, 1982 response to the Army's argument that SAFE had been dilatory. It contains no mention of any telephone calls.

A protester has the burden of affirmatively proving its position. This burden requires a protester to present its complete case, including all facts and arguments which are relevant and known to it at the time, during our consideration of the original protest. We will not consider evidence on reconsideration that a party could have but did not furnish during the initial consideration of a protest. A. J. Fowler Corporation--Second Request for Reconsideration, 61 Comp. Gen. 238 (1982), 82-1 CPD 102; Interscience Systems, Inc., Cencom Systems, Inc.--Reconsideration, 59 Comp. Gen. 658 (1980), 80-2 CPD 106. Here, SAFE did not mention the telephone calls it allegedly made weekly over a 3-month period even though in its report to our Office the Army asserted that SAFE had been dilatory in protecting its interests. Parties to a protest that withhold or fail to submit all relevant information to our Office in the expectation that our Office will draw conclusions beneficial to them do so at their own peril, since it is not our function or province to prepare, for parties to a protest, defenses to or positions on allegations clearly raised. Id.

The request for reconsideration is denied.

for   
Comptroller General  
of the United States